

Softwood Lumber Agreement II: déjà vu all over again?



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Outline



- Why do we have another agreement?
- How is this agreement different than the last one?
- Why is the agreement different?
- Will it last?

Why do we have another agreement?



- Three main reasons for the persistence of the dispute
- Institutional differences-public land vs. private land
- Political economy-rent-seeking
- Normative biases-US belief in free markets and distrust of government; Canadian belief in “rule of law” and skepticism about how private firms utilize public resources
 - Harder to quantify but important because it “frames” the issues

How is this agreement different than the last one?

- There are key differences in design of agreement
 - Scope of coverage
 - Type of restraint
 - Formal Processes
 - “Faint hope” clauses and anti-circumvention provisions
 - “Standstills” and renewal options
- Fundamentally a different type of agreement

Scope of coverage



- Broader Geographic Coverage
 - Includes Saskatchewan and Manitoba
 - But BC split into Coast and Interior
- Broader Product Coverage (more products covered including non-lumber products e.g. flooring, siding)
 - But partial exemptions for independent remanufacturers and price cap of \$500/mbf

Type of restraint



- Offers different two different options-mix of export charges and quota
 - Option A export charge (sliding tax that increases as prices drop and also multiplied by 50% when shipments exceed base allocation)
 - Option B export charge and quota (also sliding tax but at lower levels that increases when prices drop plus fixed quota that shrinks under lower prices)
 - Ability to switch between systems every three years

Type of restraint (2)

- A harder cap
- But also offers Free Trade above \$355

Formal Processes

- Creation of Bi-National Softwood Lumber Council (Article XIII.A; Annex 2C, Annex 13, Schwab/Emerson side letter)
- Establishment of technical working groups
 - Examples include product definition and coverage; regional exemptions; etc.
- Reliance on outside arbitration (London Court of International Arbitration (LCIA) (Article XIV):
 - Arbitrators not allowed to be from either country
 - No appeal
- More comprehensive and formal reporting requirements (Article XV.B)

“Faint hope” clauses and anti-circumvention exemptions

- Faint hope
 - Lumber manufactured from private land logs (Article X.4)
 - Regional exemptions (Article XII.1)
- Excluded from anti-circumvention are:
 - Timber pricing changes designed to generate more market-like prices
 - Forest stewardship policies (so long as they don't negate pricing changes or export charges)

“Standstills” and renewal options



- Standstills for new US trade action (wait twelve months after US-initiated termination before new trade action can be initiated)
- Allow renewal after seven years

Why do we see these differences?



- Designed to deal with specific issues that arose in past agreement
 - Broader coverage to deal with production from “uncovered” versus “covered” during last agreement
 - although Maritime provinces remain outside agreement along with the Yukon, NWT and Nunavut
 - Broader coverage of shipment of products not covered by the agreement (but seen as softwood lumber such as rougher-headed lumber)
- Type of restraint is more tailored to market cycles
 - Old agreement didn’t adjust with market conditions and made an overheated market “hotter”
 - This agreement offers tighter constraints in the “bottom of the market” but also offers free trade when market conditions are good

Why do we see these differences (2)?

- Recognize different regional contexts
 - Allow choice of restraint (AB & BC pick option A; others option B)
- Address frustration with dispute resolution processes in past agreement
 - Perceptions that citizenship or residency taints outcome
 - Certainty in dispute resolution
- But most importantly recognize the inability to write a complete contract (know that there will be ongoing issues that need to be resolved, e.g. data reconciliation, customs concordance) and world is uncertain
 - Technical working groups, Bi-national committee

A Different Type of Agreement



- The old agreement was much more static
- The new agreement is designed to allow evolution
 - Explicitly built in with faint hope clauses
 - Implicitly designed with mechanisms to create ongoing dialogue and negotiations within the framework of the agreement

But can the agreement survive?

- The former chief negotiators don't think so:
 - “This agreement will not be durable...the dynamics going on in business are changing so quickly” Grant Aldonas
 - “This agreement does not provide for long-term resolution of this dispute” Doug Waddell
 - Both speaking at an Alberta forum on the agreement April 11, 2007

But can the agreement survive (2)?

- High headwinds today
 - Extreme short term pain
 - A cyclical industry-with the lowest prices ever
 - Return of deposits that may have maintained uneconomic capacity
 - Perceptions of an “unfair” or “ineffective” agreement
 - Canada could have done better (Canadian perspective)
 - Canadians already trying to evade (US perspective)
- But is there longer-term gain?

Can the agreement survive

(3)?

- Longer-term prospects are good for a better demand-supply balance
 - US demographics continue to support healthy demand
 - Continued limits to ability of US to supply market
 - Prospects for Canadian supply are to shrink
- All point towards improved prices even in market downturns
- But it does require longer-term perspective and escaping the trap of current rhetoric
- And longer-term evolution within agreement may yield more durable trade environment (where changing circumstances may change negotiating stances)